

**REMARKS**

Claims 1, 9, 10, and 17 and are amended herein. Support for the amendment is found, for example, on page 11, lines 9-21. Hence, no issues of new matter are presented. Upon entry of the amendment, which is respectfully requested, claims 1-19 will be all of the claims pending in the application.

**I. Drawings**

Applicants respectfully request acknowledgement of formal/corrected drawings filed with the Amendment on September 10, 2003.

**II. Request to Withdraw Finality of the Office Action dated October 30, 2003**

Applicants respectfully submit that the Office Action dated October 30, 2003, was improperly made final and request withdrawal of the finality of the Office Action.

Specifically, the Examiner states on page 8 of the Office Action that Applicants' amendment necessitated the new grounds of rejection presented in the Office Action. However, Applicants note that claim 1 was amended by adding the phrase "wherein said transflector does not include a reflective polarizer". Further, new claims 17-20 were added directed to a transflector having the properties discussed on page 11, lines 9-21 of the specification. These amendments were made to clarify the claim language and to make the claims commensurate in scope with the arguments made in the Amendment filed on January 2, 2003. Applicants submit that under such circumstances, it is not proper for the Examiner to make the next Office Action relying on newly cited art final unless amendments were made to the claims, which necessitated

AMENDMENT UNDER 37 C.F.R. § 1.116 AND  
REQUEST TO WITHDRAW FINALITY  
U.S. APPL. NO. 09/776,671

Attorney Docket No. Q65912

application of the art submitted. In this case, the only substantive amendment to the claims was made by incorporating subject matter that was discussed as distinguishing factors of the present invention in the Amendment filed on January 2, 2003, and described in the original disclosure which did not necessitate the application of the newly cited reference. See MPEP § 706.07(a). Specifically, it states in the MPEP:

A second or subsequent action on the merits in any application or patent involved in reexamination proceedings should not be made final if it includes a rejection, on prior art not of record, of any claim amended to include limitations which should reasonably have been expected to be claimed. See MPEP § 904 *et seq.*

Therefore, since the amendments to claim 1 merely incorporated the subject matter discussed in the Amendment filed on January 2, 2003, and described in the original disclosure, which should have at least been anticipated by the Examiner as part of the claimed invention, it is improper to make a final rejection wherein a new rejection is made over prior art not of record.

Further, the amendment of claim 1 and the addition of claims 17-20 did not affect the scope of the claims such that the newly cited Ouderkirk et al reference could not have been applied in a previous Office Action. (See MPEP § 904 which states "[t]he first search should cover the invention as described and claimed, including the inventive concepts toward which the claims appear to be directed" and MPEP § 904.03, which states, "... the search should, insofar as possible, also cover all subject matter which the examiner reasonably anticipates might be incorporated into applicants' amendment.")

Accordingly, Applicants respectfully request withdrawal of the finality of the Office Action dated October 30, 2003.

**III. Response to Rejections Under 35 U.S.C. § 102**

Claims 1-2, 4, 12-14 and 16-17 are rejected under 35 U.S.C. § 102(b) as allegedly being anticipated Ouderkirk et al. The Examiner's rejection is primarily based on Figure 5 of Ouderkirk et al. According to the Examiner, Figure 5 of Ouderkirk et al discloses a transflector between the backlight 54 in a liquid crystal display. Dichroic polarizer 11 is combined with reflective polarizer 12 and liquid crystal cell 52, rear dichroic polarizer 11 and reflector 12 are considered to be next to light source 54. The Examiner further states that a transmission axis of the dichroic polarizer 11 and of the reflective polarizer 12 are directed to the same direction since light ray 29 is preferentially transmitted by both the dichroic polarizer 11 and the reflective polarizer 12. The dichroic polarizer is disclosed as being iodine-based and may be laminated with a birefringence polarizer. It is also disclosed that the reflective polarizer is a multi-layer laminate composed of two or more kinds of polymer films.

Claim 1 is amended herein to more clearly define the layer for the transflector of the claimed transfective polarizer. Claim 1 recites that the transflector comprises at least one layer selected from the group consisting of (1) a layer including at least one of particles or voids dispersed into a transparent or translucent resin and having different refractive indices from the resin; and (2) a layer of hardened film of a light-or heat-setting resin comprising dispersed particles or voids having different refractive indices on the transparent or translucent resin film.

Ouderkirk et al does not disclose or suggest a transflector as recited in claim 1. Thus, Ouderkirk et al does not anticipate the claimed invention. Claims 2, 4, 12-14 and 16 -17 depend from claim 1 and are distinguished for at least the same reason.

Accordingly Applicants respectfully request withdrawal of the rejection.

**IV. Rejections Under 35 U.S.C. § 103(a)**

Claims 3 and 5-8 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Ouderkirk et al in view of Weber et al.

Claim 9 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Ouderkirk et al, in view of Ketchpel.

Claims 10-11 and 18-19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Ouderkirk et al, in view of Perregaux et al and Cobb Jr., et al.

Claim 15 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Ouderkirk et al, in view of Inoue et al.

In the rejections, the references are applied as previously discussed.

Applicants respectfully traverse the rejection and submit that the references, taken alone or in combination do not teach or suggest all elements of the presently claimed invention. Specifically, as discussed above, Ouderkirk et al, the primary reference in each reach rejection, does not disclose, teach or suggest a transflector of the claimed transflective polarizer as recited in claim 1 as amended. Further, none of the cited secondary references remedies the deficiencies

AMENDMENT UNDER 37 C.F.R. § 1.116 AND  
REQUEST TO WITHDRAW FINALITY  
U.S. APPL. NO. 09/776,671

Attorney Docket No. Q65912

of Ouderkirk et al. Claims, 3, 5-11, 15 and 18-19 depend from claim 1 and are distinguished over the art for at least the same reason as claim 1.

Accordingly, Applicants respectfully request withdrawal of the rejections.

**V. Conclusion**

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

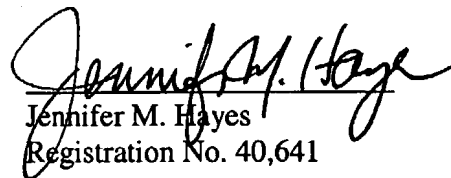
Respectfully submitted,

SUGHRUE MION, PLLC  
Telephone: (202) 293-7060  
Facsimile: (202) 293-7860

WASHINGTON OFFICE

**23373**

CUSTOMER NUMBER

  
Jennifer M. Hayes  
Registration No. 40,641

Date: April 30, 2004